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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,906	12/12/2001	Louis-Marie Dussere	213716	5515

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EXAMINER

WEBB, SARAH K

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 03/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

Office Action Summary	Application No.		Applicant(s)	
	09/937,906		DUSSERE, LOUIS-MARIE	
	Examiner		Art Unit	
	Sarah K Webb		3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 1,207,120 to Younker.

Younker discloses a teat that includes a plate with a bite plane (21,22), a vestibular screen, a means projecting forwards from the mouth, and a nipple (10) that contacts the back of the tongue. The teat includes an element (11) that closes a bottle (12), as shown in Figure 1. The teat further includes a channel (13) passing through the nipple so that liquid from the bottle can be delivered to an infant (column 2, lines 73-79).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,2, and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,814,074 to Branam in view of EPO 0 383 315 (Orpaz).

Regarding claim 1: Branam discloses a pacifier that includes a plate and nipple (16). As shown in Figure 7, the plate includes a both bite plane (56) and vestibular screen (54). The plate is secured a projection (76) that extends out from the mouth. Branam fails to form the nipple (16) so that it extends to the back portion of the tongue. Orpaz discloses a pacifier very similar to the device of Branam. Figures 3A-C of Orpaz illustrate a pacifier that includes a nipple (5) and a gum massaging plate (1). Orpaz teaches from this illustration that the nipple can extend to the back portion of the tongue, as the nipple extends to the rear edge of the gum massaging plate (1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the nipple of the Branam pacifier so that it extends to the back portion of the tongue, as taught by Orpaz, as this is another way to form a pacifier that has both a nipple and a biting plate.

Regarding claim 2: Orpaz explains that the device is elastic, as the sucking motion of an infant causes “back and forth”, or elastic motion (column 1, line 53- col, 2, line 1).

Regarding claim 5: As most clearly seen in Figure 11, the dental arches come into abutment with an edge (74) of the vestibular screen (54). Regarding claim 6, the plates of both Orpaz and Branam are U-shaped and the limbs extends to the rear of the dental arches.

Regarding claim 7, the plate (56), nipple (58), and screen (54) of Branam are integrally molded, as most clearly shown in Figure 7.

Regarding claim 8, Branam fails to include an abrasive surface on the plate. Orpaz includes an abrasive surface on the plate (1), and teaches that small protrusions on

the plate assist in massaging the gums (column 1, line 39). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an abrasive surface on the plate of Branam, as taught by Orpaz, as this helps to massage the gums.

Regarding claim 9, both the Orpaz and Branam devices include a shield that presses against the lips, which prevents an infant from swallowing the device.

3. Claims 3,4,and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Branam in view of Orpaz, as applied to claim 1 above, and further in view of US Patent No. 4,986,751 to Bergersen.

Branam, as modified by Orpaz, fails to offset a bottom portion of the screen relative to a top portion of the screen. Bergersen teaches that the bottom bite plane should be offset rearwards by a couple of millimeters relative to the top bite plane, as shown in Figures 5 and 8. Bergersen teaches that this configuration prevents mandibular under development (column 3, lines 54-60). It would have been obvious to one of ordinary skill in the art at the time the invention was made to offset the bottom bite plane of the modified Branam device, as taught by Bergersen, as this promotes a desired relationship between the top and bottom jaws.

4. Claims 10,12,15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Branam in view of Orpaz, as applied above, and further in view of US Patent No. 1,207,120 to Younker.

Branam, as modified by Orpaz, includes all the limitations of claims 10 and 15-19, except for a means for closing a baby's bottle and a channel passing through the teat. Younker teaches that a pacifier with a bite plane and nipple can further include a means for closing a bottle and a channel for allowing the liquid from the bottle to pass through the nipple. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a bottle attachment and channel in the pacifier of the modified Branam device, as taught by Younker, as this improves the versatility and usefulness of the pacifier.

5. Claims 13,14, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Branam and Orpaz in view of Bergersen, as applied to claims 3,4, and 11 above, and further in view of Younker.

Branam, as modified by Orpaz and Bergersen, includes all the limitations of claims 10 and 15-19, except for a means for closing a baby's bottle and a channel passing through the teat. Younker teaches that a pacifier with a bite plane and nipple can further include a means for closing a bottle and a channel for allowing the liquid from the bottle to pass through the nipple. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a bottle attachment and channel in the pacifier of the modified Branam device, as taught by Younker, as this improves the versatility and usefulness of the pacifier.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah K Webb whose telephone number is (703) 305-7554. The examiner can normally be reached on 8am-4:30pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on 703-308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Sarah K Webb
Examiner
Art Unit 3731

SW
February 27, 2003



Michael Milano
Supervisory Patent Examiner
Art Unit 3700